

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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U. S. COURT OF APPEALS
**BRIEF AND APPENDIX
FOR APPELLANT**

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 7934

807
FILED SEP 12 1941
J. W. Stewart

P. GORDON COOPER AND ALBIN COOPER, *Appellants*.

v.

ELSIE BURTON; AND LLOYD L. SCHROEDER, PUR-
PORTING TO ACT AS COMMITTEE FOR EMMA
K. COOPER, *Appellees*.

**Appeal from an Order of the District Court of the United
States for the District of Columbia**

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I.

OPINION BELOW.

No memorandum of opinion was filed by the Associate
Justice hearing this case.

II.

JURISDICTIONAL STATEMENT.

EMMA K. COOPER is now and has been for many years an adult citizen of the United States and a resident of the District of Columbia. She became incompetent in 1932 and in 1934 was sent to a sanitarium in Bergen County, New Jersey for temporary treatment (Appendix p. 2). Under Section 2, Title 16 of the 1929 Code of Laws of the District of Columbia (June 30, 1902, 32 Stat. 524, c. 1329, Sec. 115B; February 10, 1927, 44 Stat. 1067, c. 100)—there is conferred upon the Equity Court of the United States District Court for the District of Columbia “Full power and authority to superintend and direct the affairs of persons *non compos mentis*, and to appoint a committee or trustees for such persons after hearing the nearest relatives of such persons, or some of them if residing within the jurisdiction of the court * * *”. It is alleged in the petition and must be taken as true that Emma K. Cooper has been absent from the District of Columbia since 1934 and that during all the intervening time as well as before 1934 she was *non compos mentis*. (Appendix p. 2) Under Title 24, Sec. 377 of the District (Code 1929) (Act of March 3, 1901, 31 Stat. 1206, c. 854, Sec. 104; June 30, 1902, 32 Stat. 523, c. 1329) it is provided that if a person be non compos and a defendant in any suit personal service shall be had upon him *if within the district* or upon his committee if there be one within the district. Sec. 378 of Title 24 (March 3, 1901, 41 Stat. 456, c. 153) provides that “Publication may be substituted for personal service of process upon any defendant who cannot be found and who is shown by affidavit to be a non resident, *or to have been absent from the District for at least six months* (Emphasis supplied), * * *”. Section 381 of Title 24 (March 3, 1901, Stat. 1206, c. 854, Sec. 108; June 30, 1902, 32 Stat. 523, c. 1329) provides for publication of the Court’s order for substituted service by publication once a week for three successive weeks and by Section 382 of said Title 24

(March 3, 1901, 31 Stat. 1207, c. 854, Sec. 109) the court is specifically empowered, where it is satisfied that the person *non compos mentis* is absent, to issue such decree or judgment "as the circumstances of the case may require." Under the above stated sections of the Code of Laws of the District of Columbia the District Court is fully empowered to superintend and direct the affairs of persons who are residents of the District of Columbia *non compos mentis*, whether they be physically present in the District or not and to provide for the appointment of a committee for their estates. If they are absent from the District of Columbia, then the court is authorized to proceed after publication has been duly substituted for personal service apprising such parties of the pendency of the proceedings.

III.

STATEMENT OF THE CASE.

EMMA K. COOPER, a widow of about 80 years of age, is a citizen of the United States and now is and for a long time has been a resident of the District of Columbia. During the period from about 1914 to 1934 EMMA K. COOPER resided with her sons P. GORDON COOPER and ALBIN COOPER, the present appellants, in Washington, D. C. During 1932 Mrs. Cooper became incompetent to look after herself and her affairs. This condition has continued to the present time. In May, 1934, she was taken to the Christian Sanitarium, Bergen County, New Jersey for care and treatment.

All of the property of Mrs. Cooper both tangible and intangible is located either actually or constructively in the District of Columbia.

On the 18th of April, 1940, she was adjudicated in the Chancery Court of the State of New Jersey as a person of unsound mind and that court found she had been *non compos mentis* for a period of six years and upwards without lucid intervals.

Subsequently the Orphan's Court for Bergen County in the State of New Jersey undertook to appoint a general

guardian or committee of the estate of said Emma K. Cooper although she was only sojourning there for the purpose of care and treatment and was a resident of the District of Columbia.

The Appellants, her sons, P. Gordon Cooper and Albin Cooper, on October 22, 1940, filed in the District Court of the United States for the District of Columbia an amended petition for the appointment of a general (or domiciliary) committee for her in the said District and for an adjudication of Emma K. Cooper and for the appointment of a conservator for her estate during such time as must elapse before a committee could be appointed. The petitioners further averred that they had been advised that Emma K. Cooper was in such bad physical condition that to move her from the Sanitarium would endanger her life. The amended petition prayed that a subpoena be issued and be served upon her and also upon the person in whose custody she might be found, and further prayed that in the event the summons was returned "not to be found" that the Court Order substituted service of processes by publication in accordance with Title 24, Section 378 of the Code of Laws of the District of Columbia of 1929 as revised or that other service reasonably calculated to give her notice similar to that provided for in Title 24, Section 378 through 382 be had. The amended petition further prayed that a conservator of the property of Mrs. Cooper be appointed to take charge and manage her property in the District of Columbia pending the appointment of a domiciliary committee in the District and that a hearing be had to determine her mental competency. A subpoena was issued requiring Emma K. Cooper to answer the amended petition. Upon its being returned "not to be found" petitioners applied to the District Court for an order for substituted service by publication which was granted. The Order stated that the object of the proceedings was to adjudicate Emma K. Cooper as a person of unsound mind and to have appointed in the District of Columbia a committee for her property and estate or a conservator of her estate.

Copies of this order were duly mailed by registered mail postage prepaid to Elsie Burton, daughter, appellee herein, to Earl T. Cooper and Frank Cooper, sons named in the petition and to Lloyd Shroeder, the person appointed the guardian of Emma K. Cooper under decree of the Orphan's Court of Bergen County hereinabove referred to, to Emma K. Cooper and to the superintendent of the Christian Sanitarium in Bergen County, New Jersey, each at his or her last known place of address.

That thereafter on the 10th day of January, 1941, a motion in the District Court of the United States for the District of Columbia to vacate the aforesaid order of publication, to quash proof of service thereon and to dismiss the petition was filed by:

1. W. Cameron Burton as attorney for Elsie Burton "appearing specially for the purpose of this motion."

2. W. Cameron Burton, "Attorney for Emma K. Cooper acting by and through her guardian, Lloyd Shroeder." (Appendix p. 6)

Thereafter the District Court on the 6th day of March, A. D., 1941, entered an order granting the motion to vacate order of publication, to quash proof of service thereon and to dismiss the petition. From the said order this appeal was duly brought before this Honorable Court.

IV.

STATEMENT OF POINTS.

1. The learned trial justice erred in holding that the District Court of the United States for the District of Columbia has no jurisdiction to appoint a conservator for property located in the District of Columbia belonging to a resident of the District of Columbia who is *non compos mentis* and absent from the District of Columbia.

2. The learned trial justice erred in holding that the court had no jurisdiction to adjudicate a resident of the District

of Columbia who was absent from the said District, and served by Publication.

3. The learned trial justice erred in holding that the court had no jurisdiction to appoint a general committee for the property and the estate for a resident lunatic of the District of Columbia who is absent from the District and was served by Publication.

4. The learned trial justice erred in failing to give effect to Title 16, Section 2 of the Code of Laws of the District of Columbia.

5. The learned trial justice erred in failing to give effect to Title 24, Sections 378 to 382 of the Code of Laws of the District of Columbia.

6. The face of the record itself shows that the appellees have entered a general appearance to the merits of the cause and have waived their right to object to any irregularity of process.

V.

STATUTES INVOLVED.

Title 16, Section 2, Code of Laws of the District of Columbia (1929); 32 Stat. 524, c. 1329, Sec. 115b; provides as follows:

“The Equity Court shall have full power and authority to superintend and direct the affairs of persons non compos mentis, and to appoint a committee or trustees for such persons after hearing the nearest relatives of such person, or some of them if residing within the jurisdiction of the court, and to make such orders and decrees for the care of their persons and the management and preservation of their estates, including the collection, sale, exchange, and reinvestment of their personal estate, as to the court may seem proper. * * *”

Title 24, Section 378, Code of Laws of the District of Columbia (1929); 41 Stat. 556, c. 153; provides as follows:

“PUBLICATION AGAINST NONRESIDENT, THOSE ABSENT FOR SIX MONTHS, UNKNOWN HEIRS OR DEVISEES, FOR DIVORCE OR IN REM; ACTUAL SERVICE BEYOND DISTRICT. Publication may be substituted for personal service of process upon any defendant who can not be found and who is shown by affidavit to be a nonresident, or to have been absent from the District for at least six months, or against the unknown heirs or devisees of deceased persons in suits for partition, divorce, by attachment, foreclosure or mortgages and deeds of trust, the establishment of title to real estate by possession, the enforcement of mechanics’ liens, and all other liens against real or personal property within the District, and in all actions at law and in equity which have for their immediate object the enforcement of any lawful right, claim, or demand to or against any real or personal property within the jurisdiction of the court.
* * *

Title 24, Section 382, Code of Laws of the District of Columbia (1929); 31 Stat. 1207, c. 854, Sec. 109; provides as follows:

“SAME; NON COMPOS AS DEFENDANT.—If the court shall be satisfied that said absent or nonresident defendant is non compos mentis, notice may be given to him by publication as aforesaid, and upon his failure to appear such decree or judgment may be passed as the circumstances of the case may require: * * *.”

VI.

SUMMARY OF ARGUMENT.

1. The District Court’s wardship over the persons and estates of lunatics is derived from the very definite and specific power and authority granted to it by Sec. 2 of Title 16 of the Code of Laws of the District of Columbia.

2. The Court being given full and ample authority to administer the estates of lunatics necessarily has the incidental power to make effective those granted by statute.

3. While such incidental powers exist independent of statute Congress has provided specifically by those statutes known as Sections 378 and 382 of Title 24 of the District of Columbia Code for notification of persons alleged to be *non compos mentis* of proceedings affecting their real or personal property within the jurisdiction of the Court, said notification to be by publication where the person alleged to be *non compos mentis* has been absent from the jurisdiction for at least six months.

4. Therefore the court erred in failing to give effect to Title 16, Section 2 and to Title 24, Section 378 and 382 of the Code of Laws of the District of Columbia upon the application of the petitioners in this case who sought to initiate proceedings affecting the personal property in the District of Columbia of a *non compos mentis* resident of the District who has been absent therefrom for more than six months.

5. Finally the appellees herein have waived their right to object to any alleged irregularity of process by coming into court under a purported special appearance with a motion to contest the court's jurisdiction over the person of Emma K. Cooper but in fact, as is shown on the face of the record, entering a general appearance in relation to matters in addition to those stated with respect to the service of summons.

VII.

ARGUMENT.

THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA HAS BY STATUTE BEEN GIVEN FULL AND AMPLE AUTHORITY TO ADMINISTER THE ESTATES OF LUNATICS. This authority was conferred upon the court in specific terms by Congress, Title 16, Section 2 of the Code of Laws of the District of Columbia wherein it is explicitly provided that "the equity Court shall have *full power and authority* to superintend and *direct the affairs of persons non compos*

mentis, and to appoint a committee or trustees for such persons after hearing the nearest relatives of such persons, or some of them if residing within the jurisdiction of this court, and to make such orders and decrees for the care of their person and the management and preservation of their estate, including the collection, sale, exchange and re-investment of their personal estate, as to the court may seem proper * * *". (Emphasis supplied)

This language confers upon the court the power and (it may be added,) the duty to exercise supervision over the property of persons *non compos mentis*. The statute makes it incumbent upon the court to supervise the management and to preserve the estates of such persons. Since the Congress has seen fit to give the Court this authority and confer upon the Court the wardship of persons *non compos mentis* it is to be reasonably implied and it must necessarily follow that the court has been vested with the necessary incidental power to make effective and to carry out the powers and duties specifically conferred upon it. This statute does not in its terms include a provision for service of process upon the lunatic but the omission of provision for the service of process cannot be construed in derogation of the powers specifically granted the court by the terms of the statute.

It is clearly apparent that to put the statute into effect it necessarily must be inferred that the court can use such means of notice of the proceedings to the lunatic as may be reasonably adapted to protect the rights of lunatics and at the same time effectuate the public policy of protecting their persons and preserving their estates. This power exists in the court independent of any other statute except insofar as Congress has passed other statutes which by their terms are specifically applicable to cases of persons *non compos mentis*.

A reasonable method of serving process upon persons *non compos mentis* and for substituting publication for personal service of process has been prescribed by Congress

in the several sections of Title 24 of the Code of Laws of the District of Columbia (1929).

Section 377, Title 24, provides that where any person *non compos mentis* is a defendant in a proceedings process shall be served upon him if within the District or upon his committee if within the District. Section 378 which appears applicable to the case at bar, provides for substitution of publication for personal service of process upon any defendant who (1) either cannot be found or (2) who is shown to have been absent from the District for at least six months, for any actions which have for their immediate object the enforcement or establishment of any claim or demand with respect to real or personal property within the jurisdiction of this court. In the instant proceedings petitioners pray among other things that a conservator be appointed to take charge of Mrs. Cooper's estate until a general committee can be permanently appointed here at her domicile. Clearly since this petition has as its object the appointment of a domiciliary committee or conservator or both it is an action of the nature referred to in Section 378. It must be taken as a fact in this case that Mrs. Cooper is a resident of the District of Columbia; that she has been since 1932 *non compos mentis*, and that since 1934 she has been temporarily absent from the District (Appendix P. 2). Section 378 requires that in order to substitute publication for personal service of process the defendant must have been absent for at least six months. It is to be noted that while the language refers to "any defendant" it is part of an act which provides for service of process upon persons *non compos mentis* and section 382 described below makes this section (Section 378) specifically applicable to lunatics. Section 379-80 and 381 of Title 24 which follow in the District Code describe the nature, form and manner of publication to be undertaken. In this case these sections were fully complied with. Section 382 states that "*if the court shall be satisfied that the said absent or non resident defendant is non compos mentis, notice may be given to him by publication as afore-*

said, and upon his failure to appear such decree or judgment may be passed as the circumstances of the case may require" (Emphasis supplied). Thus section 382 not only reaffirms in specific terms that the above mentioned sections are applicable to proceedings affecting the property and persons of lunatics but also goes further and confers upon the court the discretion in cases where the lunatic does not appear to pass such orders as the circumstances of the particular case may seem to require. The above mentioned sections of Title 24 are the only statutes passed by Congress making provision for the service of process upon lunatics in cases where their real or personal property in the District of Columbia is affected. While the power of the court to superintend the affairs of lunatics exists independent of the means prescribed for giving them notice of the proceedings Congress has seen fit to prescribe a specific means of notice in Title 24. The learned trial justice in this case was thus clearly in error in failing to give effect to the aforementioned terms of the statute in accordance with the prayers of the petition below.

In some cases where there has been no specific statutory provision for the service of process upon persons *non compos mentis* whose affairs or property are to be administered in the jurisdiction still the courts have held that the power of the Equity court over the estates of lunatics is such that the Court may use such means of notice as will satisfy it that the rights of the alleged lunatic are protected. See *Ex Parte Southcott*, 2 Ves. Sr. 401., 28 English Rep. 71., Also in *re Wilson*, 9 Delaware Chancery 332. To hold that the Court has power to proceed in the case of a person physically within the district or who is legally a resident elsewhere but has no power to proceed in the case of one who is a resident of the District of Columbia and has property in this jurisdiction but who is sojourning at a point outside the district would leave entirely unprotected the property and estates of lunatics who are as much the objects of the sovereign solicitude as those of lunatics actually

within the District of Columbia or who are legally non residents.

The District Court of the United States for the District of Columbia unquestionably even apart from the aforementioned statutes has jurisdiction to appoint a conservator of the property of Mrs. Emma K. Cooper, which is within the bounds of the District. In this connection the Court's attention is directed to the case of *McCormack v. Blaine*, 345 Ill. 461, 178 N. E. 195, 77 ALR 1215. McCormack, an alleged lunatic, was domiciled in Illinois but absent from that state receiving care and treatment in California. He possessed certain property in the State of Illinois. Petitioners in Illinois instituted proceedings requesting an examination into the sanity of the alleged lunatic and if he was found to be *non compos mentis* that a conservator be appointed both for his property and of his person. Service by publication was substituted for personal service, a hearing was had, a jury impanelled. The jury found McCormack to be incompetent. Whereupon the Court appointed a conservator for his property within the jurisdiction of the State of Illinois but denied the prayer for an appointment of a conservator of his person on the ground that to do this it would be necessary under the terms of the Illinois Statute to have personal service upon the defendant. The Illinois Supreme Court in upholding the Probate Court stated "It is conceded as indeed it must be that the state has jurisdiction to appoint a conservator of the property of a person domicilled in such state who is absent from the state, but has property within the state. This is on the ground that the state has jurisdiction of the property within its boundaries, and, while it may be said that the judgment of the court affecting such property may likewise affect its absent owner it is incidental to the state's jurisdiction over the property." In the instant case in the court below part of the relief that the petitioners sought was the appointment of a conservator for the property of Mrs. Cooper in the District of Columbia.

The power of the District Court to appoint a general committee of the estate of a resident lunatic absent from the jurisdiction was reviewed by the District Court recently in the case of Mr. McLean, (In re: Edward B. McLean, *non compos mentis*, Lunacy No. 15494.) a resident of the District of Columbia, who was confined for treatment and care in a sanitarium at Towson, Maryland. (The right of that court to determine whether or not George B. Fraser was entitled to represent McLean in those proceedings was later upheld by this court in *McLean v. Burkinshaw*, 71 App. D. C. 107, 107 Fed. 2nd 665.) In the *McLean* case a petition was filed in the District Court asking that a general committee be appointed by the said court but in view of the fact that it was impossible for reasons of health to bring defendant McLean personally into the District of Columbia the court ordered service by special process server substituted for personal service. Mr. Justice Laws in discussing the right of the court to proceed by substitute service and to appoint a general committee for his estate in the District, stated: "In my study of the question of notice in this case I have given thought to the manner of accomplishing service of notice and have reached the conclusion that the provisions of the laws in effect in the District of Columbia are adequate to accomplish a valid service upon Mr. McLean in Maryland. Section 2 of Title 16 of the District of Columbia Code provided that the Equity Court shall have full power and authority to superintend and direct the affairs of persons *non compos mentis*, and to appoint a committee or trustees for such persons after hearing nearest relatives of such persons or some of them if residing within the jurisdiction of the court, and to make such orders and decrees for the care of their person and management and preservation of their estates * * * as to the court may seem proper. Section 4 provides that the court shall have the same power over freehold or leasehold estates as is provided for in relation to estates of infants. Section 5 provides for sales for the maintenance of the lunatic and the payment of judg-

ments. The recent legislation on the subject P. L. 582, 75th Congress, Act of June 8, 1938, (Title 16, Chapter 2) provides in detail for the manner of adjudication of alleged insane persons in the District of Columbia. Section 44 of Title 15 of the District of Columbia Code, * * * provides for the appointment of a committee for non residents, without providing any notice to the lunatic non resident. Section 377 of Title 24 provides for process on persons *non compos mentis* who are parties defendants in suits and further provides for the appointment of a guardian *ad litem* to answer and defend for them."

**THE APPELLEES HEREIN HAVE AS IS SHOWN BY
THE FACE OF THE RECORD ENTERED AN
APPEARANCE TO THE MERITS OF THE CASE
AND WAIVED THEIR RIGHT TO OBJECT AS TO
ANY IRREGULARITY OF PROCESS.**

The motions of appellees to vacate order of publication, to quash proof of service thereon and to dismiss petition are signed respectively by "W. Cameron Burton, attorney for Emma K. Cooper by and thru her guardian" (Appendix P. 6) and "W. Cameron Burton, attorney for Elsie Burton". These appearances contain among other things language to the effect that they are special appearances for the purpose of the motion only. But the motion assigns for its grounds not only the claim that the court is without jurisdiction of the person of Emma K. Cooper but states that "The court had no power to order the publication aforesaid (Appendix P. 5) and that "This court is without jurisdiction of the subject matter of the petition". (Appendix P. 6.) The subject matter of the petition is the adjudication of a domiciliary of the District of Columbia and the appointment of a conservator and then a domiciliary committee for her property situate in the District of Columbia. Thus, in addition to raising the question of acquisition of jurisdiction by this court over the person of Emma K. Cooper, which it purports to do, and to which a special ap-

pearance properly would have to confine itself, it also raises four other questions namely:

(1) Whether the court has power to order publication under Title 24 of the Code of Laws of the District of Columbia,

(2) Whether the court may adjudicate a resident of the District of Columbia, absent from the district,

(3) Whether the court may appoint a conservator of the property situate in the District of a person *non compos mentis* who is a resident of the District but absent therefrom and

(4) Whether the court may appoint a domiciliary committee for such person. This motion clearly brought the appellees before the court below on a general appearance to the merits of the cause within the rule recently laid down by this court in the case of *Manning v. Furr*, 62 App., D. C. 281, 66 F. (2) 807 (1933). In this case the defendant filed a motion, professing to appear especially for the purpose of the motion and no other, and moved the court to vacate the alias summons issued and returned served in the cause, and to dismiss the cause on the following grounds, to wit:

“1. That the said alias summons was improvidently issued.

“2. Because of lack of diligence on the part of said plaintiff in prosecuting said action, which lack of diligence has worked a discontinuance thereof.

“3. And for other matters apparent on the face of the record.”

The Court held:

“* * *

“The defendant by the third ground has entered a general appearance in the cause.

“It is elementary that:

“ ‘A defendant appearing specially to object to the jurisdiction of the court must, as a general rule, keep out of court for all other purposes. In other words, he must limit his appearance to that particu-

lar question or he will be held to have appeared generally and to have waived the objection.' 4 C. J. 1318.

"It is true that the defendant undertook to appear specially for the purpose of challenging the service of summons upon him, but, in addition to these grounds, he included the ground of 'other matters apparent on the face of the record'. The 'other matters' thus referred to must necessarily apply to matters in addition to those stated in relation to the service of the summons upon him. Such an assignment searches the entire record. It may serve as a general demurrer to the bill of particulars, *also as a challenge to the jurisdiction of the court*. As a consequence of this, it must be held that the defendant entered his appearance to the merits of the case, *Crawford v. Foster* (C. C. A.) 84 F. 939; *Mahr v. Union Pac. R. Co.* (C. C.) 140 F. 921;". (Emphasis supplied.)

The court in the *Manning* case was consistent with its earlier ruling in the case of *Lyman v. Knickerbocker Theatre Co. of Washington, D. C.*, 55 App. D. C. 323, 5 F. (2) 538, to the effect that a general demurrer to the declaration is a waiver of objection to the service of summons.

VIII. CONCLUSION.

It is therefore urged that the learned trial justice was in error in entering an order granting the motion to vacate order of publication, to quash proof of service thereon and to dismiss petition and that this Honorable Court should reverse the order and remand the case for further proceedings.

Respectfully submitted,

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P. GORDON COOPER AND
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IN THE
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No. 7934

P. GORDON COOPER AND ALBIN COOPER, *Appellant*

v.

ELSIE BURTON; AND LLOYD L. SCHROEDER, PUR-
PORTING TO ACT AS COMMITTEE FOR EMMA
K. COOPER, *Appellees*.

APPENDIX TO BRIEF FOR APPELLANT.

**PLEADINGS, DOCKET ENTRIES AND OTHER PAPERS
DESIGNATED BY APPELLANT.**

1 Filed Oct 22 1940 Charles E. Stewart, Clerk

In the District Court of the United States
For the District of Columbia

Lunacy No. 21,278

In re the Matter of EMMA K. COOPER, Non Compos Mentis

*Amended Petition for Appointment of Domiciliary
Committee and for Other Relief*

Your petitioners, P. Gordon Cooper and Albin Cooper
respectfully represent to this Honorable Court as follows:

(1) Petitioners are adult citizens of the United States and residents of the District of Columbia.

(2) That Emma K. Cooper, a widow, is a citizen of the United States and is now and has been a resident of the District of Columbia for many years last past.

(3) That for about twenty years, prior to May, 1934, said Emma K. Cooper was a resident of and domiciled in the District of Columbia and lived with her eldest son P. Gordon Cooper, one of the petitioners herein, at 4111 Garrison Street, N. W. Washington, D. C. That during, to-wit, the year 1932 said Emma K. Cooper became incompetent to look after herself and her affairs. That this condition of incompetence has continued to the present time. In May, 1934 she was sent to the Christian Sanitarium in Bergen County, New Jersey for care and treatment and has remained there to the present time. She is over eighty years of age and suffering with senile dementia and petitioners have been advised that she is in such bad physical condition that to move her from the sanitarium would endanger her life.

(4) Mrs. Cooper's property when she became incompetent consisted entirely of personal property both tangible and intangible of a total value of about Two Thousand (\$2,000.00) Dollars. This property has always remained in the District and is now in the District in the custody of petitioner, P. Gordon Cooper. Part of this property consist of a policy of insurance for One Thousand (\$1,000.00) Dollars on the life of Emma K. Cooper, the premiums on which are over due and unless arrangements are made by some person duly authorized either to pay the premium or to have the company issue in lieu of the present policy a paid up policy, this property may be lost.

(5) That recently Mrs. Cooper's sister, Elizabeth Tovar, died a resident of the State of New York and Emma K. Cooper became entitled to additional intangible personal property amounting to about Sixty Thousand (\$60,000.00) Dollars. On the 18th day of April, 1940, Emma K. Cooper

was adjudicated of unsound mind by the Chancery Court of the State of New Jersey and that Court found that she had been non compos mentis for a period of six years and upwards without lucid intervals. (A certified copy of the Decree is filed in this cause.)

(6) That said Emma K. Cooper has six living children, two of whom are residents of the District of Columbia and four of whom are not. The names, addresses and ages of these children are as follows:

P. Gordon Cooper, Son, aged 63 years or thereabouts
4111 Garrison Street, N. W., Washington, D. C.

Elsie Burton, Daughter, aged 61 years or thereabouts
212 Third Avenue, Westwood, New Jersey

Earl T. Cooper, Son, aged 50 years or thereabouts
Hillsdale, New Jersey

Frank Cooper, Son, aged 50 years or thereabouts
Box 287, Buckhannon, West Virginia

Marion Cooper, Son, aged 37 years or thereabouts
Annandale, Alexandria County, Virginia

Albin Cooper, son, aged 35 years or thereabouts
4111 Garrison Street, N. W., Washington, D. C.

3 (7) Your petitioners are informed that the Orphans' Court for Bergen County, State of New Jersey has recently undertaken to appoint a general guardian or committee of the estate of the said Emma K. Cooper, although she is not a domiciled resident of New Jersey and has no property whatsoever in the State of New Jersey and your petitioners are informed and believe that such appointment was not valid under the law of the State of New Jersey or elsewhere.

Wherefore, the premises considered, your petitioners pray:

1. That a subpoena issue requiring Emma K. Cooper to appear and answer the exigencies of the Petition and that a copy of the petition be served upon her apprising her of the pendency of these proceedings and also a copy of the Summons and Petition be served upon any person in whose

custody she may be found if within the District of Columbia.

2. That in the event the Marshal returns the summons not to be found as to Emma K. Cooper, that the Court order substituted service of process by publication in accord with Title 24, Section 378 of the Code or other service similar to that provided in Title 24, Sections 378-382 of the Code of Laws for the District of Columbia for 1929 notifying all parties interested to appear and show cause, if any there be, why the prayers of this Petition should not be granted.

3. That during the pendency of this cause and before a general guardian of the estate of Emma K. Cooper shall have been duly appointed, that a conservator of the property belonging to the said Emma K. Cooper be appointed to take charge and manage her property in the District of Columbia.

4. That a hearing be had to determine the mental competency of Emma K. Cooper and should she be found
4 to be non compos mentis that your petitioner P. Gordon Cooper be appointed domiciliary committee of the estate of the said Emma K. Cooper.

5. For such other and further relief as the nature of the cause may require and as to the court may seem meet and proper.

Respectfully submitted,

P. GORDON COOPER
ALBIN COOPER.

5

Memoranda

July 16-1940.

Affidavit of Arthur G. Lambert averring that Emma K. Cooper has been absent from the District of Columbia for more than six months last past—filed.

October 23-1940.

Subpoena issued to Emma K. Cooper. Returned by Marshal "Not to be Found". Subpoena issued to Custodian of Emma K. Cooper. Returned by Marshal "Not to be Found".

Order for Publication

The object of this suit is to adjudicate Emma K. Cooper as a person of unsound mind and to have appointed in this jurisdiction a committee of her property and estate wherever situate; and further during her absence from the city to appoint a representative of the said Emma K. Cooper to take charge of and conserve such of her property as is in this jurisdiction. On motion of the complainant, it is this 19th day of November, A. D. 1940,

ORDERED, that Emma K. Cooper, or any other person interested in the case, cause her or his appearance to be entered herein on or before the fortieth day exclusive of Sundays and Legal Holidays occurring after the day of the first publication of this order, otherwise the cause shall be proceeded with as in the case of default. Provided, a copy of this order be published once a week for three successive weeks in the Washington Law Reporter and The Washington Post before said day.

BOLITHA J. LAWS

Justice

* * * * *

7 *Motion to Vacate Order of Publication, to Quash Proof of Service Thereon and to Dismiss Petition.*

Now comes the respondent, Emma K. Cooper, by her duly qualified guardian, Lloyd L. Schroeder, appointed by the Bergen County Orphans' Court of the State of New Jersey, appearing specially for the purpose of this motion only, because of the lack of jurisdiction over the person of said Emma K. Cooper, and moves the Court to vacate the Order of Publication passed herein on November 19th, 1940, and the Proof of Service had thereon and to dismiss the Petition filed herein for the following reasons:

1. This Court had no power to order the publication aforesaid.

2. This Court is without jurisdiction of the person of Emma K. Cooper,

3. This Court is without jurisdiction of the subject-matter of the said petition.

W. CAMERON BURTON,
Investment Building,
Attorney for Emma K. Cooper, acting by and through her guardian.

Memorandum

JANUARY 10-1941.

Motion of Elsie Burton to Vacate Order of Publication, to quash Proof of Service thereon, and to Dismiss Petition—filed.

8 JANUARY 10-1941.

Proof of Publication in The Washington Law Reporter—filed.

JANUARY 17-1941.

Affidavit of Arthur G. Lambert averring that he duly mailed copies of advertisement of Order of Publication to the following: Mrs. Emma K. Cooper, Elsie Burton, Earl T. Cooper, Lloyd Schroeder, Frank Cooper, and the Superintendent, Christian Sanitarium, filed.

Proof of Publication in the Washington Post—filed.

* * * * *

9 *Order Granting Motions to Vacate Order of Publication, to Quash Proof of Service Thereon and to Dismiss Petition.*

This cause coming on to be heard upon the motions of Elsie Burton and Emma K. Cooper to vacate the Order of

Publication passed herein on November 19th, 1940, and the proof of service had thereon and to dismiss the petition filed herein and having been argued by counsel, it is by the Court this 6th day of March, A. D., 1941.

ORDERED and ADJUDGED as follows:

1. That the Order of Publication passed herein on November 19th, 1940, be and it is hereby vacated and that the proof of service had thereon be and the same is hereby quashed.

2. That the petition filed herein be and the same is hereby dismissed.

T. ALAN GOLDSBOROUGH
Justice.

OFFICE COPY

**BRIEF AND APPENDIX
FOR APPELLEES**

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 7934

P. GORDON COOPER, ET AL., *Appellants,*

v.

ELSIE BURTON, ET AL., *Appellees*

W. CAMERON BURTON,
Investment Building,
Washington, D. C.,
Attorney for Appellees.

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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 7934.

P. GORDON COOPER, ET AL., *Appellants*,

v.

ELSIE BURTON, ET AL., *Appellees*

COUNTER STATEMENT CONCERNING CASE.

It appears that, of the tangible and intangible property of Mrs. Cooper claimed to be actually or constructively in the District of Columbia (Appellant's Brief 3), only \$2,000 is actually in the District of Columbia, Mrs. Cooper having become entitled to intangible personal property amounting to about \$60,000 as the result of the death of her sister, Elizabeth Tovar, a resident of the State of New York (Appellants' App. 2).

Appellants filed a certified copy of the decree of the Chancery Court of the State of New Jersey adjudicating Mrs. Cooper of unsound mind (Appellants' App. 3). In the caption and the body of the decree, Mrs. Cooper is designated as "of the Township of Wyckoff, in the County of Bergen and State of New Jersey." (Appellees' App. 1, 2.) The decree provides, among other things, that the Clerk of the

court "transmit to the Orphans' Court of the said county of Bergen a certified copy of all the proceedings in this matter, pursuant to the statute in such case made and provided." (Appellees' App. 2.)

STATUTES AND RULES INVOLVED.

Title 15, Chapter 3, Section 44 of the District of Columbia Code provides in part as follows:

NONRESIDENT INFANT OR LUNATIC.—Whenever an infant or lunatic residing without the District is entitled to a property in the District or to maintain any action therein, a general guardian or committee of his estate, appointed by a court of competent jurisdiction in the State or Territory where said infant or lunatic resides, or any person at the request of said guardian or committee, may apply to the court by petition for ancillary letters as such guardian or committee. * * *

Title 3 of New Jersey Statutes Annotated provides in part as follows:

3:7—35. "Except as otherwise provided by law, the question whether a person is a mental incompetent shall be determined by an inquest upon a commission to be issued out of the court of chancery and returnable thereto, and proceedings thereon shall be as heretofore practiced in proceedings de lunatico inquirendo and in the nature of de lunatico inquirendo." * * *

3:7—40. "If the person is found to be a mental incompetent, the chancellor shall cause to be transmitted to the orphan's court of the county where such person resides a certified copy of all proceedings had upon the inquisition, which shall be recorded and filed in the office of the surrogate of such county."

3:7—41. "Thereupon, the orphans' court shall, upon application therefor, appoint some fit person or persons as guardian or guardians of the mental incompetent. The guardian so appointed shall have the care and safe-keeping of the mental incompetent and his real and personal property. * * *"

3:7—50. “When a non-resident has been or shall be found and proved to be a mental incompetent under the laws of the state or county where he resides, the ordinary, or the orphans’ court of a county wherein he has real or personal property, may, upon application and proof, by exhibiting and filing with the court an exemplified copy of the proceedings or by other evidence, that an inquest or finding has been had or made and that he still is a mental incompetent, make an order to show cause why a guardian should not be appointed.”
* * *

The Simplified Rules of Procedure in Civil Practice for the District Court of the United States for the District of Columbia in force at the filing and hearing of the motion to dismiss provided in part as follows:

Rule 1.

(2) “In the determination of contested issues of law or fact, or of law and fact, in probate, adoption and lunacy proceedings, these Rules and the Federal Rules of Civil Procedure, as now or hereafter in force, shall also govern the procedure on motions, depositions, discovery and testimony, and at the hearing or trial of such issues.”

Federal Rules of Civil Procedure provide in part as follows:

Rule 12

(b) * * * “No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.” * * *

SUMMARY OF ARGUMENT.

- I. No Committee of a Lunatic Can Be Appointed Without An Adjudication.
- II. Notice of an Application for a Committee of a Lunatic or Alleged Lunatic Must Be Served Upon the Latter.
- III. Service by Publication Exists Only by Virtue of Statute.
- IV. No Statute Applicable to the District of Columbia Provides for Service by Publication in the Instant Case.
- V. Proceedings for the Appointment of a Guardian of the Person of a Lunatic Act in Personam.
- VI. Personal Service Within the Jurisdiction is Necessary When the Court Acts in Personam.
- VII. The Decree of the Chancery Court of the State of New Jersey Is Entitled to Full Faith and Credit.
- VIII. The Prayer for Appointment of a Conservator *Pendente Lite* Falls with the Main Relief.
- IX. The Appellees Did Not Enter a General Appearance in the Lower Court.

ARGUMENT.

I.

No Committee of a Lunatic Can Be Appointed Without an Adjudication.

It is fundamental that no one can be deprived of his property or the enjoyment of it without due process and in the case of a lunatic, an adjudication of his status is necessary to permit the appointment of some one to control that property.

Smith v. Burlingame, 22 Fed. Cas. 13,017, 4 Mason 121.

Hamilton v. Traber, 78 Md. 26, 27 A. 229.

II.

Notice of an Application for a Committee of a Lunatic or Alleged Lunatic Must Be Served Upon the Latter.

It is equally fundamental that no guardian can be appointed for a lunatic or an alleged one without notice to the affected person. The cases in the main sustain the proposition, some of the leading ones being as follows, in the first two of which many of the authorities are collected and reviewed:

McCormick v. Blaine, 345 Ill. 461, 178 N. E. 195.
McKinstry v. Dewey, 192 Iowa 753, 185 N. W. 565.
Allis v. Morton, 4 Gray (70 Mass.) 63.
Chase v. Hathaway, 14 Mass. 222.

III.

Service by Publication Exists Only by Virtue of Statute.

At common law nothing but personal service was authorized and substituted service or service by publication exists solely by virtue of statute. Not only has it been necessary to find some statute to justify service by publication, but such statute being in derogation of common law rights, must be strictly pursued.

Thompson v. Tanner, 53 App. D. C. 3, 287 F. 980.
Plumb v. Bateman, 2 App. D. C. 156.

IV.

No Statute Applicable to the District of Columbia Provides for service by Publication in the Instant Case.

Title 24, Chapter 15, Section 378 of the D. C. Code (Appellants' Brief, 6, 7), provides in general for publication as a substitute for personal service. It enumerates the suits or actions in which publication may be had and the proceeding here in question does not come within any of the actions expressly or impliedly covered by that section. While there are other sections of the Code providing for publication in

lieu of personal service in special cases, none of them have any application to the present proceeding.

This is not a suit for partition, divorce, by attachment, foreclosure of mortgage or deed of trust, the establishment of title to real estate by possession or enforcement of mechanics' liens or any other liens against real or personal property within this District nor is it an action which has for its immediate object the enforcement of any lawful right, claim or demand to or against any real or personal property within the jurisdiction of the court as required by said section. The petitioners assert no right, claim or demand to any property of Emma K. Cooper.

Appellants concede (Appellants' Brief 11) that sections 377 to 382, both inclusive, of Title 24, are the only sections prescribing a specific means of notice to lunatics and that sections 379, 380 and 381 prescribe the nature, form and manner of publication. (Appellants' Brief 10.)

Appellants do not rely upon section 377 because this section by its terms clearly relates to suits against lunatics.

Section 382, quoted in part (Appellants' Brief 10 and 11), by its terms relates back to section 378 by the use of the words "said absent or non-resident defendant." The absent defendant can only be proceeded against in the class of cases enumerated by section 378. Since both sections specifically make provision for publication against lunatics, there is no justification for maintaining that the court has the implied power to order service by publication by virtue of Section 2 Title 16 of the D. C. Code (Appellants' Brief 6).

In *McCormick v. Blaine*, *supra*, the court held that it had no power to appoint a conservator of the person of the incompetent who, although a resident, was served by publication. In so doing it construed the statutes of the state relating to service of process upon a resident of the state who was absent therefrom and concluded that those statutes although authorizing a conservator for both person and property of a lunatic, did not purport to confer power to take jurisdiction by constructive service. It appeared that

guardians of the person of the incompetent had been appointed by a California court, but the questions of comity and full faith and credit were held unnecessary to be decided.

The case of *In re: Edward B. McLean*, Lunacy No. 15,494, cited by appellants (Appellants' Brief 13) does not support their contention that the court has implied authority by virtue of Section 2 of Title 16 to order service by publication. While the court in its memorandum (filed Jan. 9, 1939) stated that it did not base its decision solely on Sections 378 and 382, it said "it seems to me this case might be said to come within the provisions of Sections 378 and 382 of the Code, inasmuch as some of the parties herein are seeking to establish and enforce claims or demands against real and personal property within the jurisdiction of this Court."

V.

Proceedings for the Appointment of a Guardian of the Person of a Lunatic Act in Personam.

The entire amended petition seeks to act *in personam*. While it contains a prayer for a conservator "during the pendency of this cause and before a general guardian of the estate of Emma K. Cooper shall have been duly appointed" (Appellants' Brief App. 4), it prays for a domiciliary committee "of the estate of the said Emma K. Cooper." In that connection it is interesting to note that only \$2,000 of the property of Mrs. Cooper is in the District of Columbia and \$60,000 of the property is in the State of New York. The evident purpose of the petition is not to seek a conservator of property in the District but to obtain a domiciliary committee for the purpose of taking constructive possession of assets not located within the jurisdiction of the court.

The petition, insofar as it seeks a domiciliary committee, acts *in personam* for the reason that it seeks guardianship of the person of the lunatic, and not of his property.

Guardianship of the person acts *in personam* upon the lunatic.

McCormick v. Blaine, supra;
Grinbaum v. Superior Court, 192 Cal. 566, 221 Pac. 651.

VI.

Personal Service Within the Jurisdiction is Necessary When the Court Acts in Personam.

It has been held that nothing but personal service within the jurisdiction will justify a court in taking jurisdiction when it seeks to act *in personam*.

Raher v. Raher, 150 Ia. 511, 129 N. W. 494;
Sears v. Terry, 26 Conn. 273;
Grinbaum v. Superior Court, supra.

In the *Raher* case the Court held that notwithstanding the state statutes seemed to authorize personal service on residents outside of the state to permit a personal judgment, they were violative of the Federal and State Constitutions in so doing. The court held that the judgment appointing a guardian of the person was void and cited *Pennoyer v. Neff*, 95 U. S. 714, 24 L. ed. 565, for the proposition that personal service within the jurisdiction is necessary whether the defendant be a resident or non-resident.

See also *Martin v. White*, 76 C. C. A. 671, 146 Fed. 461, where personal service was said to be required under a statute which called for notice without stating its form even though the alleged incompetent was a resident who had disappeared.

While there are decisions authorizing substituted service, they rely generally upon express statutes authorizing such service. For example see:

State ex rel. v. Holtcamp, 218 Mo. App. 440, 277 S. W. 607;
In re Hendrickson, 40 S. D. 211, 167 N. W. 172.

However, the cases of *Ex Parte Southcott*, 2 Ves. Sr. 401, 28 Eng. Rep. 71 and *In re Wilson*, 9 Del. Ch. 332, cited by appellants, are no authority for justifying a court in acting *in personam* without personal service, for in the latter case the court specifically states and in the former it plainly appears by inference that jurisdiction only of the property of the lunatics is being taken.

Mrs. Cooper is, as stated by the petition (Appellants' App. 2) over eighty years of age and suffering with senile dementia, and is in such physical condition that any removal to the District of Columbia would endanger her life. Obviously, therefore, it is impossible to obtain personal service upon Mrs. Cooper and the amended petition was rightly dismissed.

VII.

The Decree of the Chancery Court of the State of New Jersey is Entitled to Full Faith and Credit.

The decree of the Chancery Court of the State of New Jersey in its caption and in its body described Mrs. Cooper as being "of the Township of Wyckoff, in the County of Bergen, and State of New Jersey." Prima facie, therefore, she was adjudicated as a resident of New Jersey. This fact is further borne out by reason of one of the provisions of the decree directing that a certified copy of all of the proceedings in the matter be transmitted to the Orphans' Court of the County of Bergen, pursuant to the statute in such case made and provided.

Section 3:7-35, New Jersey Statutes Annotated, provides for an inquest upon a commission to be issued out of the Court of Chancery. Section 3:7-40 provides for transmission of a certified copy of the proceedings to the Orphans' Court of the County where the person resides. Section 3:7-41 provides for the appointment of a guardian.

In the case of a non-resident a different procedure is provided by Section 3:7-50. It seems evident, therefore, that since the Chancery Court directed the transmission of a certified copy of the proceedings to the Orphans' Court

of the County of Bergen, where *prima facie* Mrs. Cooper resided, that the Court adjudicated her as a resident of the State.

The judgments and decrees of the Courts of the various states are entitled to full faith and credit in the Courts of the United States.

Davis v. Davis, 305 U. S. 32, 83 L. ed. 26.

The judgment or decree is presumed to be valid, and in the absence of anything shown in the record to the contrary, to be based upon jurisdiction of the person and the subject-matter involved.

Galpin v. Page, 85 U. S. 350, 21 L. ed. 959.

While it is true that a decree may be denied validity for want of jurisdiction in the Court rendering it, the mere allegation of the appellants that Mrs. Cooper was not a resident of the State of New Jersey does not suffice. So long as she was personally served with process, and that must be here presumed, the Court had jurisdiction.

In the case of *Chaloner v. Sherman*, 242 U. S. 455, 61 L. ed. 427, it was held that the appointment of a guardian of the person and estate of an alleged lunatic could not be collaterally attacked so long as personal service was obtained, notwithstanding the contention of the alleged incompetent that he was not a resident of the jurisdiction where he was adjudicated and that he was fraudulently enticed therein. The Court points out that no action was taken in the Court in which the decree was rendered attempting to set aside that decree. While full faith and credit was not mentioned in the decision, the same principles apply.

VIII.**The Prayer for Appointment of a Conservator Pendente Lite Falls With the Main Relief.**

As heretofore pointed out, a conservator is only sought pending the appointment of a domiciliary committee and is distinctly incidental to the main relief.

If the decree of the Chancery Court of the State of New Jersey is relied upon for the adjudication, then the appellants must take all which goes with it and that means that they are without standing because Mrs. Cooper was adjudicated, as herein demonstrated, as a resident of the State of New Jersey.

In such a situation, Title 15, Chapter 3, Section 44, D. C. Code, would apply; that section providing that in the case of a non-resident lunatic only the foreign guardian or some one requested by him to act may be appointed.

It goes without saying that if the appellants did not rely upon the New Jersey decree, they have no adjudication to support the prayer for the conservator, and no justifiable discretion would exist for the granting of the prayer.

The appointment of a conservator being only incidental to the main relief should fail since the main relief is impossible of fulfillment.

IX.**The Appellees Did Not Enter a General Appearance in the Lower Court.**

The cases cited by the appellants in support of their contention that a general appearance was entered are not applicable to the instant case for the reason that this is an equity proceeding and not a suit at law. Different considerations apply. In the case of *Herzog v. Hubbard*, 68 App. D. C. 383, 98 F. (2d) 255, following *Ryan v. McAdoo*, 46 App. D. C. 117, this Court held that in an equity case, a special appearance is not waived by challenging the jurisdiction of the Court upon all grounds appearing on the face of the bill. This is so by reason of the equity rule then in force requir-

ing all defenses in point of law appearing on the face of the bill to be incorporated in a single motion to dismiss.

The motion to dismiss filed in the instant case challenges only the jurisdiction of the person and of the subject-matter and the power of the Court to order publication and goes no further than the motion approved in *Herzog v. Hubbard*, *supra*. The motion does not go into the merits of the controversy.

Moreover Rule 12 (b) of the Federal Rules of Civil Procedure provides that no defense is waived by being joined with any other defense in a pleading or motion. How far this rule is applicable to the present case is not entirely clear. Rule I (2) of the Simplified Rules of Procedure in Civil Practice for the District Court of the United States for the District of Columbia in force at the hearing and filing of the motion provided that those rules and the Federal Rules of Civil Procedure should govern the procedure on contested motions in lunacy matters. Whether this latter rule would make Rule 12 (b) applicable is unnecessary to decide. In any event the appellees have not entered a general appearance herein, whether their motion be governed by the former equity practice and rules or the new rules.

CONCLUSION.

Appellees have contended herein and still contend that service by publication upon Mrs. Cooper was not authorized because of the failure of the statutes to specifically provide therefor and that even express statutory authority would be invalid as violative of due process. Further that the decree of the Chancery Court of the State of New Jersey is entitled to be fully recognized in the circumstances of this case. Ample support for these propositions are contained in the cases cited herein.

Assuming, but not admitting, that due process would permit service by publication upon an absent resident in a case like the present, such service would seem entirely unjustified unless clear and express statutory authority could

be found. Such statutory authority does not exist in this jurisdiction, and the granting of appellees' motion was in all respects proper.

Respectfully submitted,

W. CAMERON BURTON,
Investment Building,
Washington, D. C.,

*Attorney for Elsie Burton and
Lloyd L. Schroeder, guardian
of Emma K. Cooper, ap-
pointed by Bergen County
Orphans' Court of the State
of New Jersey, Appellees.*

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 7934

P. GORDON COOPER, ET AL., *Appellants*,

v.

ELSIE BURTON, ET AL., *Appellees*

APPENDIX TO BRIEF FOR APPELLEES.

17 Endorsed: Filed May 11, 1940, Charles E. Stewart,
Clerk.

In Chancery of New Jersey.

In the Matter of Emma K. Cooper, of the Township of
Wyckoff, in the County of Bergen and State of New
Jersey, alleged to be a Lunatic.

Decree.

Filed April 29, 1940.

This matter being opened to the court by Randall & Freeman, solicitors of the petitioner, and it appearing that the commission awarded in this matter has been duly executed and returned into this court with inquisition thereto annexed taken before Lloyd L. Schroeder, Esq., Joseph F. Duffy, M.D., and Gustave Meyer, Esq., the commis-

sioners in the said commission named, and bearing date the 7th day of March, 1940, by which the jurors who passed upon that inquiry have found that the said Emma K. Cooper of the Township of Wyckoff in the County of Bergen and State of New Jersey was at the time of taking said inquisition a lunatic and of unsound mind and does not enjoy lucid intervals so that she is not capable of governing herself, her lands and tenements, goods and chattels; and that she has been in the same state of lunacy for the space of six (6) years last past and upwards; and that at the time of taking the said inquisition, she was seized of and entitled to a one-fifth ($1/5$ th) interest in and to the Estate of Elizabeth D. Tovar, deceased, a sister of the said Emma K. Cooper, the said Elizabeth D. Tovar having died a resident of the City of New York and State of New York, and that in addition thereto, the said Emma K. Cooper is seized of and entitled to certain other personal property mentioned in said inquisition, that the amount of and value of the said Estate of Emma K. Cooper are as mentioned in the said inquisition; that she has not during the said period of six (6) years of her lunacy alienated any lands or
 18 tenements that at the time of taking said inquisition, the said Emma K. Cooper was possessed of and entitled to the said personal property as is mentioned in the said inquisition;

It is thereupon on this 29th day of April, 1940, ordered and decreed that the said proceedings be and all things confirmed; that the Clerk of this court transmit to the Orphans' Court of the said County of Bergen a certified copy of all the proceedings in this matter, pursuant to the statute in such case made and provided.

It is further ordered that the sum of \$40.00 be allowed and paid to the Master Commissioner, and the sum of \$25.00 to each of the other Commissioners and the sum of \$3.00 to each of the Jurors for their services.

And it is further ordered that the sum of \$250.00 be allowed and paid to Randall & Freeman, Solicitors for the Petitioner, and that all of the sums aforesaid be paid out

of the Estate of the said Emma K. Cooper, and that the same be included in the taxed costs of these proceedings.

LUTHER A. CAMPBELL, C.

Respectfully advised, Vivian M. Lewis, V.C.

19 I, Edw. L. Whalen, Clerk of the Court of Chancery of the State of New Jersey, the same being a Court of Record, do hereby certify that the foregoing are true copies of the Notice, Filed April 18, 1940, Writ of Inquisition, Filed April 18, 1940 and the Decree, Filed April 29, 1940, in the matter of Emma K. Cooper of the Township of Wyckoff, in the County of Bergen and State of New Jersey, a Lunatic, now on the files of my office.

(Seal)

In testimony whereof, I have hereto set my hand and affixed the seal of said Court, at Trenton, this 6th day of May A. D. nineteen hundred and forty.

EDW. L. WHELAN,
Clerk.

I, Luther A. Campbell, Chancellor of the State of New Jersey, do hereby certify that Edw. L. Whelan, whose name is subscribed to the above certificate, was, at the date thereof, and now is, the Clerk of the Court of Chancery of the State of New Jersey, that said attestation is in due form, that the seal thereto annexed is the seal of said Court, and that the signature of the said Edw. L. Whelan is in his own proper handwriting.

Witness my hand at the City of Trenton this 6th day of May, A. D. nineteen hundred and forty.

LUTHER A. CAMPBELL,
Chancellor.

Note.—This certificate is made pursuant to an act of Congress (Rev. Stat. U. S. 1875, sec. 905, p. 170.)